670.

SUPREME COURT OF THE UNITED STATES.

No. 145.

MARY McFARLAND AND JOHN FERGUSON, ADMINISTRATORS OF JOHN R. McFARLAND, DEC'D, & AL., PLAINTIFFS IN ERROR,

vs.

VIRGIL McKNIGHT.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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McFARLAND's adm'rs & al.
vs.
McKNIGHT.

STATE OF KENTUCKY, *sct:*

Pleas before Ewing, chief justice, and Marshall and Buck, judges, composing the court of appeals of the State of Kentucky, at the capitol, in Frankfort, on the 19th June, 1846.

Preamble.

Be it remembered, that on the 2d of August, 1845, the administrators of J. R. McFarland and others sued out from said court a writ of error against Virgil McKnight to a decree of the Louisville chancery court, and filed the following transcript from said court, to wit:

Record from court below.

COMMONWEALTH OF KENTUCKY,
Louisville chancery court, sct:

Before the honorable George M. Bibb, chancellor and sole judge of the Louisville chancery court, at the court-house in Louisville, on the 7th day of November, 1843.

VIRGIL McKNIGHT, complainant,
against
JOHN R. McFARLANE, Wm. Christopher, Jacob Renear, Jacob Darneal, and A. Kirkpatrick, &c., defendants. } In chancery.

Be it remembered, that heretofore, to wit, on the 14th day of February, 1840, at a chancery court held for the court aforesaid, came the clerk of the Jefferson circuit court and filed a transcript herein, together with all the original papers, which was examined by the chancellor and ordered to be placed on the trial docket; which transcript is as follows, to wit:

Transcript from Jefferson circuit court.

STATE OF KENTUCKY:

Pleas before the honorable John J. Marshall, sole judge of the Jefferson circuit court, at the court in the city of Louisville, in the State aforesaid, on the 25th day of May, 1836.

VIRGIL MCKNIGHT, complainant,
against
WILLIAM CHRISTOPHER, also Mary McFarland, and John M. Ferguson, admrs. of John R. McFarland, deceased, Jacob Reanear, Jacob Darneal, M. Quarrier, and A. Kirkpatrick, defendants. } In chancery.

Be it remembered, that heretofore, to wit, on the 3d day of November, 1831, the complainant, by Messrs. Guthrie & Wilson, his counsel, filed in the clerk's office of the court aforesaid, his bill in chancery against the said defendants; which bill is as follows, to wit:

Bill.

To the honorable the judge of the Jefferson circuit court, in chancery sitting:

Your orator, Virgil McKnight, would respectfully represent, that on the 3d day of July, 1831, [he] owned and was in the possession of a certain negro woman, slave for life, named Ruthy, wife of Thornton Blackburn, aged about twenty-two years, of the value of $500; that being so possessed, the said negro was taken from this circuit on board a certain steamboat known by the name of the Versailles, without the knowledge or consent of your orator, and transported beyond the limits of this State, to parts unknown to complainant. By reason of which taking and transportation, complainant hath sustained damage $500, the value of the said negro, and $15 in expenses and trouble of search.

Your orator would further represent, that M. Quarrier was the captain in command of said boat at the time the said negro was taken, and said boat was then the property of William Christopher, J. R. McFarland, Jacob Renear, Jacob Darneal, and A. Kirkpatrick, and since that time the said William Christopher has sold his entire interest to the said Quarrier.

Your orator makes the said William Christopher, J. R. McFarland, Jacob Renear, Jacob Darneal, M. Quarrier, and A. Kirkpatrick, defendants to this bill. He states that the said boat is now in this circuit. He prays chancery process against said defendants, and that the said boat be attached and decreed to be sold for whatsoever sum your honor may determine your orator is entitled to recover against said defendants and boat. Your orator prays for all general and equitable relief, and as in duty bound will ever pray, &c.

GUTHRIE & WILSON, *P. C.*

STATE OF KENTUCKY, *Jefferson county, sct:*

This is to certify, that the within named Virgil McKnight this day made oath before me, the undersigned justice of the peace for the county aforesaid, that what he has stated in the foregoing bill, of his

own knowledge, is true, and what he has stated from the information of others, he believes to be true.

Given under my hand, this 3d of November, 1831.

ROBERT H. GRAYSON, *J. P., J. C.*

Order for subpœna and seizure of boat.

The clerk of the Jefferson circuit court will issue a subpœna in chancery, according to the prayer of the foregoing bill, with endorsement, that the sheriff, in executing the same on the defendants, or any of them, shall take into his care and custody the steamboat Versailles, and her safely keep, and have her forthcoming and subject to the decree of the court to be rendered in this cause, unless the said defendants, or some person for them, shall give bond, with good and sufficient security, in the penalty of $1,000, conditioned that the defendants shall pay and satisfy the decree of the court in this case, provided the complainant shall execute bond in your office, with good and sufficient security, in the penalty of $1,000, payable to the defendants, conditioned to pay to said defendants all such damages and costs as shall be sustained by said defendants in case this writ shall have improperly issued.

Given under my hand, this 3d November, 1831.

HENRY PIRTLE.

Injunction bond.—(Injunction bond.)

Know all men by these presents, that we, Virgil McKnight and James Guthrie, of the county of Jefferson, State of Kentucky, are held and firmly bound unto William Christopher, J. R. McFarland, Jacob Renear, Jacob Darneal, M. Quarrier, and A. Kirkpatrick, in the full and just sum of $1,000, current money of the United States. For the payment whereof, well and truly to be made to the said William Christopher, J. R. McFarland, Jacob Renear, Jacob Darneal, M. Quarrier, and A. Kirkpatrick, their executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 3d day of November, 1831.

The condition of the above obligation is such, that whereas, on this day the above bound Virgil McKnight filed his bill in chancery, in the Jefferson circuit court, Kentucky, against the above named William Christopher and others, and thereon the honorable Henry Pirtle, judge of the court aforesaid, made the following endorsement, to wit:

"The clerk of the Jefferson circuit court will issue a subpœna in chancery, according to the prayer of the foregoing bill, with endorsement, that the sheriff, in executing the same on the defendants, or any of them, shall take into his care and custody the steamboat Versailles, and her safely keep, and have her forthcoming and subject to the decree of the court to be rendered in this cause, unless the said defendants, or some person for them, shall give bond, with good and sufficient security, in the penalty of $1,000, conditioned that the defendants shall pay and satisfy the decree of the court in this case, provided the complainant shall execute bond in your office, with good and sufficient security,

in the penalty of $1,000, payable to the defendants, conditioned to pay to said defendants all such damages and costs as shall be sustained by said defendants in case this writ shall have improperly issued."

Now, therefore, if the said Virgil McKnight, his heirs, executors, or administrators, shall well and truly pay to the said William Christopher, J. R. McFarland, Jacob Renear, Jacob Darneal, M. Quarrier, and A. Kirkpatrick, their executors, administrators, or assigns, all such damages and costs as shall be sustained by them in case this writ shall have improperly issued, then the above and foregoing obligation to be void, else to be and remain in full force and virtue.

V. McKNIGHT, [SEAL.]
JAS. GUTHRIE. [SEAL.]

Teste: G. W. GWIN,
As to McKnight.
JOHN KEARNEY,
As to J. Guthrie.

Subpœna in chancery.

(Spa. in chancery.)

The Commonwealth of Kentucky, to the sheriff of Jefferson county, greeting:

We command you that you summon William Christopher, J. R. McFarland, Jacob Renear, Jacob Darneal, M. Quarrier, and A. Kirkpatrick, to appear before the judge of our Jefferson circuit court, at the court house, in the city of Louisville, on the first day of our ensuing November term, to answer a bill in chancery in our said court, exhibited against them by Virgil McKnight; and this they shall in no wise omit, under the penalty of £100 each, and have then there this writ.

Witness Worden Pope, clerk of our said court, at the court house aforesaid, on the 3d day of November, 1831, and in the 40th year of the commonwealth.

WORDEN POPE.

Endorsement.

By order of the hon. the judge of the Jefferson circuit court, in the State of Kentucky, the foregoing subpœna in chancery was directed to be endorsed as follows, to wit: "The clerk of the Jefferson circuit court will issue a subpœna in chancery, according to the prayer of the foregoing bill, with endorsement, that the sheriff, in executing the same on the defendants, or any of them, shall take into his care and custody the steamboat Versailles, and her safely keep, and have her forthcoming, and subject to the decree of the court to be rendered in this case, unless said defendants, or some person for them, shall give bond, with good and sufficient security, in the penalty of $1,000, conditioned that the defendants shall pay and satisfy the decree of the court in this case, provided the complainant shall execute bond in your office, with good and sufficient security, in the penalty of $1,000, payable to the def ndants,

conditioned to pay to said defendants all such damages and costs as shall be sustained by said defendants in case this writ shall have wrongfully issued;" which bond has been executed by the complainant.

Teste: WORDEN POPE, *Cl'k.*

Sheriff's return.

Came to hand 4th November, 1831, and executed same day on M. Quarrier, J. R. McFarland, and A. Kirkpatrick, and took bond of Quarrier and McFarland. W. A. COCKE, *D. S.*
For RO. MILLER, *S. J. C.*

Bond of defendants.

(Bond of defendants.)

Know all men by these presents that we, Monroe Quarrier and J. R. McFarland are held and firmly bound to Virgil McKnight in the penal sum of $1,000, for the payment whereof we bind ourselves, jointly and severally. As witness our hands this 4th day of November, 1831.

The condition of this obligation is such, that whereas a subpœna in chancery was issued on the 3d inst., by the clerk of the Jefferson circuit court, at the suit of Virgil McKnight against M. Quarrier, J. R. McFarland, Jacob Renear, Jacob Darneal, A. Kirkpatrick, and William Christopher, upon which, by order of the judge of the said court, the following endorsement is made: "The clerk of the Jefferson circuit court will issue a subpœna in chancery, according to the prayer of the foregoing bill, with endorsement, that the sheriff, on executing the same on the defendants, or any of them, shall take into his care and custody the steamboat Versailles, and her safely keep, and have her forthcoming, and subject to the decree of the court to be rendered in this case, unless the said defendants, or some person for them, shall give bond, with good and sufficient security, in the penalty of $1,000, conditioned that the defendants shall pay and satisfy the decree which may be rendered against them in said suit, then the foregoing obligation to be void, and of no effect, else to remain in full force and virtue.

M. QUARRIER, [SEAL.]
J. R. McFARLAND. [SEAL.]

Teste: W. A. COCKE, *D. S.*
For RO. MILLER, *S. J. C.*

Order filing answer.

At a court held as aforesaid on the 30th day of March, 1832, came the defendant, by his counsel, and, on his motion, leave is given him to file his answer to the complainant's bill filed against him in this cause; which answer is as follows, to wit:

Answer of Quarrier.

The separate answer of Monroe Quarrier to a bill in chancery, exhibited against him and others, in the Jefferson circuit court, by Virgil McKnight.

The defendant, saving and reserving to himself all and all manner of

exception to the errors and insufficiencies, &c., in complainant's bill, for answer to so much thereof as he is advised it is material for him to answer unto, answers and says, that it is true he was captain of the steamboat Versailles about the time mentioned in complainant's bill, and that he is part owner of said boat; and he admits, that on the trip, about that time, of said boat up the Ohio, a negro woman was taken on board of said boat from the Indiana shore; but this respondent denies that he knew, or knows, that said woman was a slave, or that she was the property of the complainant. This respondent denies that the said woman, or any other negro woman, on that trip, was, with his knowledge or consent, taken on board of the Versailles from the Kentucky shore, and transported beyond the limits of the State. This respondent alleges that the negro woman who came on board from Indiana was the only negro woman taken on board on that trip, as far as he knows; and that no negro was, at that time, or during that trip, taken on board from the Kentucky side; and that he has no recollection of any other negro woman being received on board on that trip except the one referred to. This respondent knows nothing of what became of said negro. This respondent further states that he is a citizen of Virginia, and that he was, at the time of being captain as aforesaid of the steamboat Versailles, engaged in lawful commerce in navigating with said boat the waters of the river Ohio, under the laws and regulations of the United States. He insists, that although complainant may succeed in establishing that the negro woman taken on board of the Versailles from Indiana was his slave, yet the law of Kentucky, under which complainant expects to recover for said slave, is, as he is advised and believes, so far as it applies to this case, unconstitutional and void; and he relies on the unconstitutionality of said law, if complainant, by proof, brings his case within it. He calls on complainant for full proof of all allegations not admitted, and prays to be dismissed with costs, &c.

M. QUARRIER.

PIRTLE & ANDERSON.

Alias subpœna to Woodford.

The Commonwealth of Kentucky, to the sheriff of Woodford county, greeting:

We again command you to summon William Christopher, J. R. McFarland, Jacob Renear, Jacob Darneal, M. Quarrier, and A. Kirkpatrick, to appear before the judge of our circuit court for the Jefferson circuit, at the court-house, in the city of Louisville, on the 1st day of our next October term, to answer a bill in chancery in our said court, exhibited against them by Virgil McKnight. And this they shall in no wise omit, under the penalty of £100 each, and have then there this writ.

Witness Worden Pope, clerk of our said court, at the court-house aforesaid, on the 11th day of August, 1832, and in the 41 year of the commonwealth.

WORDEN POPE.

674.

On which is endorsed: "Note.—This summons is not to be executed on Quarrier, McFarland, or Kirkpatrick.

Teste: WORDEN POPE, *Clerk*.

Sheriff's return.

Executed on Jacob Renear, Jacob Darneal, and William Christopher, Sept. 1st, 1832.

WILLIS FIELD, *S. W. C.*

Order allowing sheriff's bill.

At a court held as aforesaid on the 10th of April, 1833, came the complainant, by his counsel, and, on motion of Wm. A. Cocke, it is ordered, that complainant pay him the sum of six dollars for his trouble and services as deputy sheriff, as by the following bill, to wit:

Sheriff's bill.

Virgil McKnight,

To the sheriff of Jefferson county.

1831, Nov. 3.	For serving a spa. chy. vs. M. Quarrier, McFarland, and Kirkpatrick, and restraining order - - - - -	$1 50
	To attaching steamboat Versailles, under said attachment, for $500, and taking bond -	4 00
	Taking bond - - - - -	50
		$6 00

WM. A. COCKE, *D. S.*
For ROBT. MILLER, *S. J. C.*

Order filing bill of revivor.

At a court held as aforesaid on the 9th of May, 1833, came the complainant, by his counsel, and filed a bill of revivor in this cause, making Mary McFarland and John M. Ferguson administrators of the defendant, J. R. McFarland, defendants hereto; which bill of revivor is as follows, to wit:

Bill of revivor.

To the hon. judge of Jefferson circuit court, in chancery sitting:

Your orator, Virgil McKnight, would respectfully state to your honor, that heretofore, to wit, on the day he filed in this honorable court his bill in chancery against William Christopher, John R. McFarland, Jacob Renear, &c., and process issued against the defendants to said bill, and was in *fact* executed, and other proceedings taken in said cause, which are all referred to, and made a part of this bill. He states that, since filing said bill, the said John R. McFarland has departed this life, and Mary McFarland and John M. Ferguson have administered on his estate; and they, with the other defendants in

said bill, are prayed to be made defendants to this bill, and that process be awarded, and the said Mary McFarland and John M. Ferguson compelled to answer this bill and the original bill, and that the cause be revived, and your orator be allowed to avail himself of the proceedings had herein; and he prays, as in his original bill, &c.

GUTHRIE & WILSON.

Order awarding alias process to Woodford.

At a court held as aforesaid on the 22d of May, 1833, came the complainant, by his counsel, and, on his motion, alias process is awarded him thereon to Woodford county against the defendants, Mary McFarland and John M. Ferguson, administrators of John R. McFarland, and returnable here on the 1st day of the next July term of this court; and this cause is continued.

Alias process to Woodford.

The Commonwealth of Kentucky, to the sheriff of Woodford county, greeting:

We command you to summon Mary McFarland and John M. Ferguson, administrators of John R. McFarland, deceased, to appear before the judge of our circuit court for the Jefferson circuit, at the court house, in the city of Louisville, on the 1st day of our next July term, to answer a bill of revivor in chancery in our said court, exhibited against them and others by Virgil McKnight, and this they shall in no wise omit, under the penalty of £100 each, and have then there this writ.

Witness Edm'd P. Pope, clerk of our said court, at the court house aforesaid, the 22d day of May, 1833, and in the 41st year of the commonwealth.

EDM'D P. POPE.

Sheriff's return.

Executed 22d June, 1833.

WILLIS FIELD, *S. W. C.*

Venue changed.

At a court held as aforesaid on the 25th of May, 1835, came the complainants and defendants in the foregoing cause, by their counsel, and, on their motion, and by consent, it is ordered, that the venue in said cause be, and the same is hereby, removed to the Louisville chancery court, and that the clerk of this court transmit *to* papers accordingly.

(The depositions sent with this cause are copied hereafter, at pages of this transcript.)

Costs in circuit court.

Complainants' costs.

Clerk - - - - -	$3 62½
Sheriff - - - - -	3 00
Magistrate - - - -	2 00
	$8 62½

Defendant's costs, $3 59. Transcript fee, 50 cents.

STATE OF KENTUCKY, *Jefferson circuit, sct:*

I, Edmund P. Pope, clerk of the Jefferson circuit court in the State aforesaid, do certify, that the foregoing three pages, this included, contain a full transcript of all orders and entries made in said cause up to this date, and that all the original papers, marked from No. 1 to No. 11 inclusive, are herewith transmitted.

Witness my hand this 8th day of February, 1840, and in the 48th year of the commonwealth.

EDM'D P. POPE, *C.*

Set for trial.

At a chancery held for the court aforesaid on the 15th day of December, 1840, ordered, that this cause be set for trial here on Tuesday, 15th inst.

Cause heard and submitted.

At a court held as aforesaid on the 15th of December, 1840, came the complainant, by his counsel, and this cause came on to be heard, and was submitted; but the court, not being advised, took time.

Opinion and decree.

At a court held as aforesaid on the 5th day of January, 1841, the court, being now advised, delivered the following opinion and decree in this case, and the case of Oldham against McFarland and others:

"These suits are against the owners and master of the steamboat Versailles for having taken on board, in the circuit of Jefferson of this State, and transported beyond the limits of this State, a female slave called Ruthy, the property of McKnight, and a man slave called Thornton Blackburn, the property of Oldham, as is alleged, to the great damage of the respective owners.

The actions are prosecuted under three several statutes of this commonwealth. The first, to prevent masters of vessels and others from employing or removing slaves from this State, approved January 7th, 1824. (1 Digest by M. & B., 259.) The second supplemental, approved February 12, 1828. (1 Digest, 260.) The third directing the trial of the facts necessary to sustain the action, and the assessment

of damages to be by a jury. Approved February 2d, 1837, (session acts, chap. 209, sec. 9, page 106.)

By the act of 1824 it is enacted, "That any master or commander of a steamboat or other vessel, who shall hereafter hire or employ, or take as passenger or otherwise, out of the limits of this State, or shall suffer to be hired or employed, or taken as passenger on board of such steamboat, or other vessel under his command or in his charge, or otherwise take out of the limits of this State, any person or persons of color, unless such colored person or persons shall have in their possession the record of some court of the United States, properly exemplified, proving his or their right to freedom; or unless such master shall have the permission of the master of such person or persons of color for such removal, every such master or commander of a steamboat or other vessel shall be liable to indictment, fine, and imprisonment, at the discretion of a jury, and shall moreover be liable in damages to the party aggrieved by such removal; and the steamboat or other vessel, in which such colored person or persons shall be employed, hired, or taken as passenger, or otherwise removed out of the limits of this commonwealth, shall be liable to the party aggrieved by such removal, and may be proceeded against by suit in chancery, and condemned and sold to pay and satisfy such damages and costs of suit."

The supplemental act of February 12, 1828, extends the provisions to the "owners, mate, clerk, pilot, and engineer of any steam vessel, as well as to the master, and they shall all be liable to indictment or to action to the party aggrieved, either jointly with the master, or severally, and either at law or in equity."

"SEC. 2. Be it further enacted, that the liabilities under said act shall accrue whenever the person of color shall be taken on board any steam vessel from the shores of the Ohio river, *opposite to this State*, to the same extent as if they were taken on board from the shores or rivers within this State; and the like liability shall occur for landing or suffering them to go ashore within as without the State. Provided, nothing in this act, or the act to which this is an amendment, shall be so construed as to apply to any person of color who is not a slave."

2. Although the acts of 1824 and 1828 employ the phrase persons of color, and contain a warning to the owners and masters of steam vessels on the Ohio river, grounded on the historical facts and political institutions respecting the introduction of such persons of color into the colonies, and their general condition as slaves—that such persons of color are to be deemed slaves prima facie from their color, and thereupon to require that they produce exemplifications of their right to freedom; yet, from the body of the enactions, as well as from the express proviso in the supplement, it is evident, that neither statute can be applicable to any colored person, but one who shall turn out to be actually a slave at the time of the exportation by such steam vessel. The plaintiff must establish his right of property.

3. The process of subpœna to answer these cases respectively were returned executed by the officer on all of the defendants, master and

owners of the Versailles. The owners have not answered, although personally served with process within the jurisdiction of the court.

4. The master, Munroe Quarrier, has put in his answer, admitting that he was master of the steamboat Versailles at or about the time stated in the bills respectively, and that Thornton Blackburn and his wife Ruthy, persons of color, whom he supposed to be free, were taken on board the Versailles from the Indiana shore of the Ohio river, on a trip of the Versailles up the river. He denies that he then had or now has knowledge that they were slaves, and demands the proof. He farther says: "That he is a citizen of Virginia, and was, at the time, engaged in lawful navigation and commerce with said steamboat, as master, on the Ohio river, under the laws and regulations of the United States, and insists that, although the plaintiff may succeed in establishing that the negro taken on board the Versailles was his slave, yet that the law of Kentucky, under which the complainant expects to recover, is, so far as it applies to this case, unconstitutional and void."

An agreement is filed in each case, "that the slave, if taken at all, was taken from the shores of the Ohio, adjoining the State of Indiana, and that the steamboat Versailles belonged to the port of Wheeling, Virginia, and that the officers of the boat and a part of the owners were citizens of Virginia, residing there, and the other owners citizens of Kentucky." This suit is in chancery against the steamboat, master and owners only, for the damages to be assessed by a jury, if they find the allegations of the bills respectively to be true. Two of the defendants gave bond to perform the decree that should be made.

I shall not discuss every abstract question that might by possibility arise under those statutes, but shall apply the reasoning to the remedies now pursued in a civil suit for damages, to be tried as to the facts and the damages, by the inquest of a jury, against the owners of the steamboat Versailles and the master of that boat. The facts are, that these negroes were slaves; the woman the property of McKnight, the man the property of Oldham. The owners of the slaves resided in Louisville, the slaves ran away from their owners, and on the next day the steamboat Versailles, having just before left the port of Louisville upon a trip up the Ohio, upon being hailed by these negroes from the Indiana side of the river, was checked in her headway by taking off the steam; and whilst the boat Versailles was floating in the Ohio river, but a short distance above Jeffersonville, (which is opposite to Louisville,) the two slaves were taken on board, registered as passengers on the books of the Versailles, conveyed on board to Cincinnati, and there landed, whereby they have been lost to their owners.

Upon what grounds the counsel for the defence would question the validity of the acts of the Legislature of Kentucky, or the rightful jurisdiction to apply the remedy as now pursued by the owners of the slaves for damages, and in a trial by jury, although instituted by bill in chancery, (or whether by any, after seeing the facts as made out by proof,) I am not informed by written brief or oral argument.

The question may be considered under these general heads:

I. The offence.

II. The remedy.

III. The rightful domain, sovereignty, and jurisdiction of the State of Kentucky over the locus in quo, as defined in the statute of the 12th of February, 1828, declaring the offence so as to enact the remedy and try the offenders.

I. As to the offence. By the constitution and laws of Kentucky, Ruthy was the slave and lawful property of McKnight, and Thornton Blackburn was the slave and lawful property of said Oldham. The owners were lawfully possessed in Kentucky of the slaves. Being so slaves, and in possession of their owners in Kentucky, not emancipated, but unlawfully absconding and escaping from the service and employment of their owners, they remained the lawful property of their owners within whatsoever State or place, within the United States, they should be found, after their escape from the service of their owners. The Constitution of the United States recognises this description of property. It is therein provided, (art. 4, sec. 2, par. 3,) that "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered upon claim of the party to whom such service or labor may be due."

The act of Congress of the United States, more effectually to carry into execution this provision of the Constitution need not be quoted.

7. The fact of transporting a slave beyond the reach of the owner, without the permission of the master, to his great loss and damage, by the meddling and interfering of another officiously and importunely, is a wrong—an offence against the rights of property any where and every where in the United States. To take a slave, so near to the master's pursuit and repossession, by officiously intermeddling, and transport him or her, without permission of the owner, to distant parts, by a mode of conveyance so swift as to elude the vigilance of the owner to reclaim, is an offence—a private wrong to the owner—a cause of action for redress, as clearly as to take away an apprentice, a horse, or a box of goods. The places from and to which taken and transported unlawfully, or the species of property so transported, are matters proper to be considered in assessing the quantum of damage occasioned.

The wrong, as predicated and defined by the statute, is not any novel definition, but pre-existing; and if applied to goods and chattels generally, is a private wrong, well known to the principles of the common law. The rights of property in things being declared, and the division between *meum* and *tuum* being established, the principles of the common law, the civil, of the code of every civilized nation, would pronounce such an unauthorized, officious, injurious, intermeddling by one man with the property of another, to be an offence, a trespass upon the rights of property.

8. As to the facts agreed, that some of the owners and the master of the Versailles were citizens of Virginia, and the vessel belonged to the port of Wheeling, the proposition need only be stated, and the general

assent follows to the self-evident truth, that no citizen of Virginia, owner, or master, or officer of a steamboat or other water craft, belonging to the port of Wheeling, in moving up or down upon the *service* of the Ohio river, in the channel or near its shores, in or out of Virginia, can have privilege, exemption, or immunity, by reason of his citizenship, or the port to which his boat belongs, from punishment and redress for public and private wrongs. Persons moving upon or using the Ohio river for the purpose of trade and commerce, out of their own State, or port, or place of residence, have not, thereby, privilege to commit murders, nor robberies, nor thefts, nor trespasses upon the persons, boats, wood, slaves, goods and chattels of others, which they may see upon the shores or waters of the Ohio.

The actings and doings described, denounced, and forefended in the act of the Legislature of Kentucky, did constitute offences and wrongs, by the principles of the common law, against the rights of such property as were known to the common law. The particular species of property described in the act of the legislature, being known and established by the constitution and laws of Kentucky, is recognised and assured to the owners in the Constitution of the United States, as valid and to be respected in every State. The like actings and doings, as to goods and chattels, would be wrongs by the common law. The act of the Legislature of Kentucky has not created any new offence or wrong, but has singled out a particular class of wrongs for the purpose of giving a more effective remedy.

II. As to the remedy provided by the statute, this may be considered under these heads:

1st. Against the owners.

2d. Against the master of the steamboat.

3d. The responsibilities of the owners for the act of the master.

4th. The process in *rem* against the boat.

9. First. As against the owners who may personally have committed the wrong. Their personal responsibility to the injured to redress the wrong stands upon general principles, well established as the universal rule of justice.

10. Second. As against the master who was guilty of the wrong. His responsibility, personally, for redress stands upon the same general principles. Every one is personally responsible to redress the injury which he shall himself have committed against the rights of another.

11. Third. As to the responsibility of the owners for private injuries to others, not done personally by them, but by the masters in conducting their vessel. This responsibility of the owner, for the private wrongs and trespasses of the master, committed in the conduct of the vessel entrusted to his command by the owners, stands upon principles well known and established. The master of a ship or steamboat is appointed by the owner or owners. The owners are responsible, civilly, for the faults and trespasses of the master appointed by them, and occasioned by the negligence or unskilfulness of the master in the conduct and employment of the vessel.

"For security of individuals in society it is not sufficient that a man himself be prohibited from doing mischiefs; he ought over and above to be careful and vigilant, that persons, animals, and things, under his power, do no mischief; and if he neglect this branch of his duty, he is liable to repair the mischief that ensues, equally as if it had proceeded from his own act. With respect to servants, it is the master's business to make a right choice, and to keep them under proper discipline; and therefore, if they do any mischief that might have been foreseen and prevented, he is liable. Thus, if a passenger be hurt by servants throwing a stone out of a window in my house, or have his clothes soiled by dirty water poured down upon him, the damage must be repaired by me in the first instance, reserving to me relief against my servant." "It is the duty of a man who carries stones in a wagon along the highway, to pack them so as to prevent harm; and if, by careless package, a stone drop out and bruise a passenger, the man is liable."

Such are the doctrines stated by Lord Kairn in his Principles of Equity, (book 1, part 1, sec. 2, pages 63–65.)

The owners of vessels are not only liable for the contracts of the master, but also for his management of the vessel. If the master injures another vessel from his want of care and skill, the owner is liable for the injury as well as the master. Bussy vs. Donaldson, 4 Dallas, 207. Purviance vs. Angus, 1 Dallas, 184. Bees' adm. Rep., 369. The Thames, 5 Rob. adm. Rep., 345. 1 Roccus, notes 3–5, XI. An action will be against the master for the injury done by his servant through negligence or unskilfulness, acting in his master's employ; as, when a servant of a carman ran over a boy in the streets, and maimed him; so where the servant of A with his cart ran against the cart of B, which contained a pipe of wine, whereby the wine was spilled, these masters were made to pay for the acts of their servants. (1 Lord Raymond, 739. Anonymous & Jones vs. Hart. 2 Salk., 441.) In such cases, if it be alleged that the defendant, the master, negligently drove his cart, the proof that his servant did it will support the declaration. Brucker vs. Fromont, 6 Term Rep., 659.

To an action on the case against several partners for negligence in their servants, whereby the plaintiff's goods were lost, it cannot be pleaded in abatement that there are other partners not named. Mitchell vs. Tarbut and others, 5 Term Rep., 649. And generally in actions not founded on contract, but sounding in damages *ex delicto*, the plaintiff may sue some or all who are liable; but as to the joinder or non-joinder of all the persons who are responsible, these are but questions of form. As to the first, second, and third of these heads of remedy afforded by the Legislature in civil actions against the owners and master of the vessel, either jointly or severally, for the private injuries done by the employment of the vessel, they are not departures from the former doctrines of the law in respect of injuries on land or water in like cases.

4. As to the process in rem. The act makes the steamboat itself liable on board of which the injury was committed, by the unlawful em-

ployment of it, for the purpose of carrying off the property of others, against their will and without permission. This does but subject to the reparation of damages the property of those who are, by established principles, responsible for the injury. All the owners are liable for the act of their servant and master in so injuring others by the unlawful employment of the steamboat to transport their property beyond their reach. The personal responsibility of all includes the property of all, and to subject the particular property used to commit the offence, so belonging to the wrong-doers, by arresting it *in liminie*, is no stretch of power, no unwarrantable or unconstitutional exercise of legislative authority in providing remedies for injuries. It is a familiar species of remedy known in the maritime law; it is exercised in numerous classes of cases by the Congress of the United States, and by the Legislatures of the several States. Steamboats are arrested and made liable for the penalties of running without inspection and certificate of the condition of the boilers. Vessels are seized and condemned for being engaged in an illicit or prohibited trade, or for breach of the revenue laws, or for other violations of law. Ships are liable by process in rem for wages. Liens are given for repairs, &c.; and so for building, the mechanics have, by the laws of many of the States, liens on the lands and buildings.

III. As to the jurisdiction and rightful authority of the Legislature of Kentucky over the place or portion of the Ohio river, defined in the statute, to prohibit the offence, enact the remedy, and try the offenders in an action at the suit of the individuals injured.

The liabilities are, whenever a slave, without permission of the master, shall be taken on board of any steam vessel from the shores of the Ohio river, opposite to this State, and transported and landed at some other place.

The offence is in taking the slave on board the steam vessel, and transporting thereon and thereby. The transportation so done is the gist of the action. The steam vessel is the instrument, and the Ohio river is the highway of the transportation. The offence must be committed on a defined part of the Ohio river. The commencement of the offence is by the taking on board from the shores of the Ohio river, opposite to this State, and is consummated by the transportation on board. Thus, a particular part of the river, short of its whole length, is defined and limited for the place of the offence.

13. Fourthly. The State of Virginia owned the lands on both sides of the Ohio river, from the northern boundary line of Virginia to the mouth of the Ohio, and exercised over the river the right of domain, empire, sovereignty, and jurisdiction. This possession on both sides of the river gave to Virginia, according to the principles of the law of nations, the domain, empire, sovereignty, and jurisdiction over that part of the Ohio river flowing through her territory. The right of passage upon the Ohio river through the State of Virginia for the purposes of navigation, trade, and commerce, which belonged to others, not citizens of Virginia, as well as to her own citizens, was held in subordina-

tion to the general domain, empire, sovereignty, and jurisdiction of the State of Virginia. Crimes and wrongs against the public, or against individuals, committed and done on the Ohio from the northern boundary of Virginia to the mouth, were properly cognizable by the State of Virginia, to prohibit, punish, and redress.

The right of passage and use for the lawful and innocent purposes of navigation, trade, and commerce, *take* not take away the sovereignty and jurisdiction of the State of Virginia to legislate and prohibit those using the passage and water of the Ohio river, within her territory, from doing mischief to the State, or her citizens, or foreigners, or their property within the limits of Virginia. Those who use the right of navigation, trade, and commerce upon the arms of the lakes or rivers within the territory of a State or nation, are bound, whether citizens, subjects, or aliens, to conduct themselves orderly, peaceably, and innocently. (Grotius of War and Peace, book ii, chap. 2, sec. 12 to 16, p. 151; chap. 3, sec. 18, p. 171; Puff., book iii, sec. 7; Vattel, book i, chap. 20, § 245, p. 104; chap. 22, sec. 278, p. 115; chap. 23, sec. 289 to 295, p. 118; book ii, chap. 8, sec. 101, 102, 105, p. 160, 161; chap. 10, sec. 133, p. 171; Bynkershoeck, chap. 8, p. 60 of ed. by Duponceau)

The State of Virginia ceded to the United States the territory lying northwest of the Ohio river. By the cession the domain, empire, sovereignty, and jurisdiction of Virginia over the Ohio river did not pass, but remained to that State.

14. By the erection of Kentucky into an independent State, by the compact between Virginia and Kentucky, and the limits assigned to the new State, and the assent of the Congress of the United States to that compact, Kentucky as a State became invested with the domain, sovereignty, and jurisdiction over the Ohio river, from its mouth up to Big Sandy river, as fully as formerly held and possessed by the State of Virginia. By this right of domain, sovereignty, and jurisdiction, the whole power, legislative, executive, and judicial, belongs to the State of Kentucky over the waters of the Ohio river to the northwestern shore or bank along its course, from the mouth of Big Sandy river to the mouth of the Ohio river; and this power and jurisdiction is plenary to define and to punish crimes and offences against the public peace, and to prohibit and redress wrongs, the better to protect and foster the proper and innocent purposes of navigation, trade, and commerce. The act of Kentucky in question is certainly penned so as to designate that part of the Ohio river which is within the limits and rightful jurisdiction of this State, and no more. It is a solemn duty which Kentucky owes to other States and nations, and to her own citizens in particular, to take care that the right to use the river within her limits for the innocent, commendable, and rightful purposes, and natural ends, of navigation, trade, and commerce, be not perverted and abused to means of annoyance and mischiefs. This duty is incumbent on her as a civilized State, having place among the nations and governments of this earth. It is a moral duty which she owes particularly to her own citizens.

The laws of any State, nation, or empire, have force within its limits. Neither the citizens of other States of this Union, nor the citizens or subjects of foreign states or potentates, have the right, whilst within the limits of Kentucky, to disrespect her laws, to commit wrongs, trespasses, or damage, upon persons or property within her limits. All persons and property within the limits of this State, during the stay, whether temporary or permanent, are under the protection of her laws.

The jurisdiction of the courts of this State cannot be exercised over persons or property, unless found within the State. The statute under consideration, in giving the remedies against the persons and the things, must necessarily be understood as confined to such persons and to such things as shall be found within the State subject to the process of the courts.

There is nothing in these acts, in giving remedies for the redress of wrongs committed upon the property of individuals by civil action for damages to the owner, which stretches beyond the proper territorial jurisdiction and sovereignty of the State. The *locus in quo* as described in the statute is necessarily within the rightful limits of the State. The offences prohibited must be within the limits of the State. The hailing of the boat from the land in the State of Indiana is not the offence described in the statute; but the offence consists in taking of the slaves on board the steam vessel, and transportation of them on the Ohio river, so commenced on that particular portion of the river described in the statute. The original and supplementary acts are upon subjects deeply affecting the rights and tenure of property to a very large value. The great extent of the water boundary of this State, the rivers navigable by steam vessels into the interior of this State, the celerity of the movements of steam vessels, expose a very great amount of property in this State to the mischiefs intended to be forefended or redressed. The property is valuable, the facility of transportation very great; the steam vessels are numerous; the persons owning and employed in conducting them more numerous; so that the aggregate value of property exposed to the heedless or vicious, the temptations and the persons tempted, and the facilities of committing depredations, collectively considered, have called forth these legislative enactions. So far as the acts prescribe the redress for private wrongs, by action for damages in law or in chancery against the master and owners, jointly or severally, or against the steam vessel to pay the damages, I see nothing to complain of, neither as an usurpation of jurisdiction, nor as disturbing the lawful right to use the river for the proper purposes of navigation, trade, and commerce.

The form in which the remedies are given, either jointly or severally, at law or in chancery, has divested the process of some of those technicalities which have at times vexed the forums.

According to the evidence in these cases respectively, the place on the Ohio river where the steamboat Versailles floated when the slaves were taken on board, was clearly within the limits of this State, and within the county and circuit of Jefferson, as charged in the bills respectively.

But the actions and remedies as permitted by the statute are cogniz-

able in any court of the State within whose jurisdiction the persons or the boat may be found amenable to the service of the process. The actions are not local but transitory, following the persons or the specific personal thing, if the action be *in rem*.

The discussion in the case of Fabrigas vs. Mostyn, (Comp., 161,) and the luminous opinion by Lord Mansfield, is conclusive to that effect. Trespass for assault and false imprisonment was maintained by a native of Minorca, in the court of England, for such injury committed in Minorca by the governor of that island.

Independent of the statutes, it seems clear to my mind, that for the damage sustained by the plaintiff in taking and transporting the slave on board the steamboat, from the place and in the manner stated and proved, an action at law, in the circuit court of Jefferson, could have been maintained against these defendants, found within the jurisdiction of the court. The statute has done no more than to give more complete and adequate remedy, either at law or in chancery, to the party aggrieved.

Therefore, a jury is to be empannelled to inquire as to the facts, &c.

1841. GEO. M. BIBB, *Chancellor.*

Decree.—Decree.

It seems to the court, that the act of the Legislature of Kentucky, approved February 12, 1828, entitled "An act to amend an act to prevent the masters of vessels and others from employing or removing persons of color from this State;" in so far as it gives remedy for damages to the party aggrieved, by suit at law or in chancery, against the owners and master of a steamboat, either jointly or severally, or against the steamboat employed in the transportation of the slave, as declared therein, is within the rightful authority and legislative jurisdiction of this State, and is a valid enaction.

Wherefore, [it] is ordered, that a jury be empannelled in this court, in convenient time to be designated, (in obedience to the act of Feb'y 2d, 1837,) for the purpose of inquiring into the truth of the facts alleged, and in issue between the parties, and for the inquisition of damages.

GEO. M. BIBB, *Chancellor.*

Order for jury to 27th Feb'y, 1841.

At a court held as aforesaid, on the 23d day of Feb'y, 1841, came the complainant, by his counsel, and on his motion, it is ordered, that the marshal of this court cause a jury to come here on Saturday next, the 27th inst.

Do. to 4th March.

At a court held as aforesaid, on the 2d day of March, 1841, came the complainant, by his counsel, and on his motion, it is ordered, that the marshal of this court cause a jury to come here on Thursday next, the 4th instant.

Jury.

At a court held as aforesaid, on the 5th of March, 1841, came the

parties, &c., and the venire facias issued herein being returned by the marshal executed; and, thereupon, the following jurors appeared, to wit: James S. Irvine, John Biggert, Francis A. Moore, Thomas Coleman, John P. Smith, William Anderson, John W. Tyler, James E. Shaw, Thomas Applegate, Wm. Jordan, Hiram McGeehee, and Peter Jones, who being elected, tried, and sworn, well and truly to inquire into and ascertain such facts as should be submitted to them on the present occasion, after having heard the cause, proof, &c., retired to consider of a verdict; and after some time returned into court the following verdict, to wit:

Verdict.

We of the jury find, 1st. That Virgil McKnight was the owner of, and had in his possession, a certain negro woman, slave for life, named Ruthy, aged about 22 years, on the 3d day of July, 1831, of the value of $400, (four hundred dollars.)

2d. That said negro woman, who was then and still is the property of the complainant, was taken from this circuit on board of a certain steamboat known by the name of the Versailles, without the knowledge or consent of the complainant—the said Ruthy not having in her possession the record of any court of the United States, properly exemplified, proving her right to freedom. That said Ruthey, after she was taken on board of said boat, was carried by said boat to Cincinnati, in the State of Ohio, or elsewhere, beyond the reach of said complainant, and there landed. That said Ruthy has not since been recovered, although the complainant has made diligent search for her. That the removal of said negro took place on or about the 3d day of July, 1831. That at the time of the grievances complained of, the steamboat Versailles, alluded to in the bill, was a steamboat trading between Louisville, in this State, and Cincinnati, in the State of Ohio, and was then on her upward passage to Cincinnati. That said Ruthy was taken on said boat Versailles, by the lawful master or commander of said vessel, from the shore of the Ohio within this commonwealth. That the complainant has sustained damages to the amount of $400, by reason of the said removal; and that said boat was the property of the defendants at the time of said removal.

JAMES S. IRVINE, *Foreman.*

Order filing bill of revivor and bill.

At a court held as aforesaid, on the 28th day of May, 1841, came the complainant, by his counsel, and, by leave of the court, filed a bill of revivor herein, making Richard Pindell, adm'r of A. Kirkpatrick, a defendant, and process is awarded.

Which bill of revivor is as follows, to wit.

The complainant herein represents, that A. Kirkpatrick, one of the defendants, has departed this life, and that Richard Pindell, esq., has administered on his estate. He therefore prays that said bill and amended bills may be revived against said administrator, and he asks, for this

purpose, the commonwealth's writ of subpœna, and prays as in his original bill, &c.

GUTHRIE & BULLOCK, *P. Q.*

Upon which the following process issued, to wit:

Process on bill of revivor.

The Commonwealth of Kentucky, to the sheriff of Fayette county, greeting:

We command you to summon Rich'd Pindell, esq., administrator of the estate of A. Kirkpatrick, dec'd, to appear before the chancellor, in the city of Louisville, on the 2d Monday of June next, to answer a bill of revivor in chancery, exhibited against him by Virgil McKnight, and this he is cautioned not to omit under the penalty and warning hereby given, that unless he shall appear and answer the said bill within 30 days from the day of the service hereof, the complainant may proceed against such defaulter to file interrogatories, and take proof of the matters of the said bill, or may have an attachment to compel an answer, or at his election may take the said bill for confessed, and the cause will be tried without further warning; of all of which you will give notice to the defendant to take heed, and that you have then and there this writ, with your due return endorsed.

Teste, Charles J. Clarke, clerk of our said court, this 29th day of May, 1841, and in the 49th year of the commonwealth.

CH. J. CLARKE.

Sheriff's return.

"Executed May 31st, 1841, by delivering a true copy of the within notice to R'd Pindell.

J. R. SLOAN, *D. S.*
For THOS. A. RUSSELL, *S. F. C.*"

At a court held as aforesaid, on the 10th of September, 1841, came the defendant Richard Pindell, by his counsel, and filed his separate answer herein.

Which answer is as follows, to wit:

Answer of Pindell.

The answer of R. Pindell to a bill, an amended bill, and bill of revivor, filed against him as adm'r of A. Kirkpatrick by Virgil McKnight, in the Louisville chancery court.

Your respondent, saving and excepting, &c., for answer herein states, that he knows nothing of the matters and things set forth by the complainant, and he is not administrator of A. Kirkpatrick, deceased; and, having fully answered, he prays to be hence dismissed with his costs.

R. PINDELL.

This day personally appeared before me, a justice of the peace in and for Fayette county, R. Pindell, and made oath that the facts stated in the foregoing answer are true.

J. G. DAVIS, *J. P.*

Order dismissing suit as to A. Kirkpatrick, and leave given to file amended bill.

At a court held as aforesaid on the 28th of September, 1841, came the complainant, by his counsel, and on his motion it is ordered, that this suit be, and the same is hereby, dismissed as to A. Kirkpatrick's administrator.

And on the further motion of the complainant, leave is given him to file an amended bill herein against Richard Pindell, administrator of John Kirkpatrick, deceased, which was done, and process awarded, &c.

Which amended bill is as follows, to wit:

Amended bill.

The complainant, by way of amendment to his original bill herein, respectfully represents:

This suit has heretofore been prosecuted by mistake against A. Kirkpatrick; that said Kirkpatrick was named John; that since the filing of the original and amended bills, said John Kirkpatrick has departed this life, and Richard Pindell, esq., is administrator de bonis non; he therefore prays that said suit be revived against said administrator, and that he be required to answer; and he prays as in his original bill, and as in duty bound, &c.

GUTHRIE & BULLOCK, *P. C.*

Process on amended bill.

The Commonwealth of Kentucky, to the sheriff of Fayette county, greeting:

We command you to summon Richard Pindell, administrator de bonis non of John Kirkpatrick, deceased, to appear before the chancellor in the city of Louisville, on the 4th Monday of October present, to answer an amended bill in chancery, exhibited against him, &c., by Virgil McKnight, and this be cautioned not to omit under the penalty and warning hereby given, that unless he appear and answer the said bill within 30 days from the day of the service hereof, the complainant may proceed against such defaulter to file interrogatories, and take proof of the matters of the said bill, or may have an attachment to compel an answer, or at his election may take the said bill for confessed, and the cause will be tried without further warning; of all of which you will give notice to the defendant to take heed, and that you have then and there this writ, with your due return endorsed. Teste: Charles J. Clarke, clerk of our said court, this 11th day of October, 1841, and in the 50th year of the commonwealth.

CH. J. CLARKE, *C.*

Sheriff's return.

"Executed on the within named Richard Pindell, 18th October, 1841, by delivering him a copy of the within process.

M. FLOURNOY, *S. F. C.*
By WALLER RODES, *D. S.*

At a court held as aforesaid on the 16th of November, 1841, came the defendant, R. Pindell, administrator de bonis non of John Kirkpatrick, by his counsel, and filed his answer herein, as follows:

Answer of R. Pindell.

The answer of R. Pindell, administrator de bonis non of John Kirkpatrick, to bills in chancery filed against him in the Louisville chancery court by Virgil McKnight:

Your respondent, for answer herein, states: That he is entirely ignorant of all the matters alleged by complainant, and requires full proof of such as are necessary to charge him. He has no estate of John Kirkpatrick in his hands; and having fully answered, prays to be hence dismissed with his costs.

R. PINDELL.

FAYETTE COUNTY, *sct:*

This day personally appeared before me R. Pindell, and made oath that the foregoing answer is true.

Given under my hand this 18th October, 1841.

J. G. DAVIS, *J. P.*

Leave to retake depositions.

At a court held as aforesaid on the 21st of October, 1842, came the complainant, by his counsel, and on his motion leave is given him to retake the depositions of Thornton Bayless, William R. Oldham, and T. C. Oldham, heretofore taken by him to be read, subject to all legal exceptions at the hearing.

Set for 13th December, 1842.

At a court held as aforesaid on the 25th of November, 1842, ordered, that this cause be set for trial here on Tuesday, the 13th day of December next.

Laid over to 16th December.

At a court held as aforesaid, 13th of December, 1842, came the complainant, by his counsel, and on his motion it is ordered, that this cause be laid over until Friday next, the 16th instant.

Cause submitted.

At a court held as aforesaid the 16th of December, 1842, came the complainant, by his counsel, and this cause came on to be heard, and was submitted; but the court, not being advised, took time, &c.

At a court held as aforesaid, 30th December, 1842. The court being now advised, rendered the following opinion and decree, to wit:

Opinion.

Since the verdict of the jury in this case, J. R. McFarland has departed this life, and a bill of revivor has been filed against his executrix and executor, Mary McFarland and John M. Ferguson; another de-

fendant, Kirkpatrick, has also departed this life, and a bill of revivor has been filed against his administrator de bonis non, Richard Pindell, who has answered, denying that he has any estate or assets of his intestate.

This suit was against the steamboat Versailles, and Monroe Quarrier, the master, and against all the owners. The boat has been restored upon bond and security to perform the decree, and so the boat is not now subject to the decree of the court.

2. The suit being instituted against the boat itself, and the owners and the master, was well begun. The subsequent release of the boat from the arrest, by bond and security, as permitted in the order for the arrest, and the removal of the boat thereby from the jurisdiction of the court to decree a sale of the boat, the decree must now be personal with the right of the plaintiff to proceed upon the bond given to obtain the restoration of the boat after it had been arrested.

In framing a decree the question arises whether that personal decree shall be against the representatives of the deceased copart-owners, along with the surviving copart-owners and the master, or only against the surviving copart-owners and the master. By the cases of Watham vs. Oldham, (9 Dana, p. 50,) and Strader vs. Fore, 2d B. Monroe, 123,) the removal of the boat authorizes a joint decree against the master who was on board when the slave was carried away, and against the owners also, although they were not on board and had no personal agency in the exportation of the slave. But inasmuch as the wrong complained of is a tort, sounding in damages, and not like to trover and conversion, as would seem from the construction given to the statutes of 1824 and 1828, by the court of appeals, in Church vs. Chambers, (3 Dana, 274,) and Watham & Oldham's H's, (9 Dana, 51,) and as the statutes, in providing this remedy, have not given it against executors and administrators, I shall, in this case, decree only against the master and surviving owners, (without meaning to decide that a decree may not, under circumstances apt and proper, go against executors and administrators.) If an executor or administrator had title as such in the boat, when the tort was committed, then undoubtedly he would, as owner or copart-owner, be responsible by a proper proceeding against the boat, master, and owners.

Decree—Decree.

The defendants, J. R. McFarland and Kirkpatrick, having departed this life, ordered and decreed, that the surviving defendants, Monroe Quarrier, Wm. Christopher, Jacob Renear, and Jacob Darneal, pay to the plaintiff, Virgil McKnight, $400, the damages by the jurors in their verdict assessed, and also the costs by the plaintiff in this behalf expended, to be taxed by the clerk.

3. And it is further ordered and decreed, declared and made known, that unless the said decree aforegoing be satisfied and performed unto the plaintiff within 30 days from the time of pronouncing it, the court will proceed upon the bond by Monroe Quarrier and J. R. Mc-

Farland, given to obtain the release of the steamboat Versailles from the arrest, to compel satisfaction of the decree from the said Monroe Quarrier, and Mary McFarland and John M. Ferguson, executrix and executor of J. R. McFarland, the deceased obligor.

GEO. M. BIBB, *Chancellor.*

Dec'r 30th, 1842.

Rule to compel payment.

At a court held as aforesaid, 22d Sept'r, 1843, came the complainant, by his counsel, and suggested to the court that the money had not been paid, as directed by the decree herein; it is therefore ordered, that Monroe Quarrier, and Mary McFarland, and John M. Ferguson, executrix and executor of J. R. McFarland deceased, the obligors in the bond given to obtain the release of the steamboat "Versailles" from the arrest, pay the same so decreed against them here in court on Tuesday, the 7th day November next, or then appear here and show cause to the contrary, if any *the* can, they being first served with a copy of this rule.

Upon a copy of the foregoing is the following return, endorsed, to wit:

Marshal's return.

"Executed on Mary McFarland and John M. Ferguson, 27th October, 1843, by delivering to each of them a copy of the within rule.

"G. W. McCONNELL, *D. S.*
"For JOHN STEELE, *S. W. C.*"

Rule on Quarrier.

At a court held as aforesaid, on the 7th Nov'r, 1843, came the complainant, by his counsel, and suggested to the court that the money had not been paid, as directed by the decree herein; it is therefore ordered, that Monroe Quarrier, and Mary McFarland and John M. Ferguson, executrix and executor, and of J. R. McFarland, deceased, the obligors in the bond, given to obtain the release of the steamboat Versailles from the arrest, pay the amount so decreed against them here in court on Tuesday, the 28th instant, or then appear here and show cause to the contrary, if any *the* can, they being first served with a copy of this rule.

Upon a copy of which the following return is endorsed, to wit:

Marshal's return.

Executed on Monroe Quarrier the 27th day of November, 1843. Copy delivered.

J. H. STURGEON, *D.*
For W. A. COCKE, *M. L. C. C.*

Depo. of T. C. Oldham.

The deposition of Talbot C. Oldham, taken at the office of the clerk of the Louisville chancery court, on the 21st day of September, 1840, agreeably to the interrogatories and commission herewith returned, to

be read as evidence on the part of the complainant in a suit in chancery pending in said court, wherein Virgil McKnight is complainant, and John R. McFarland and others are defendants; deponent, being of lawful age, and sworn, says:

1st. Have you any knowledge of two negroes, the one the property of Gideon Brown, deceased, and named Thornton Blackburn, and the other the property of Virgil McKnight, named Ruthy?

He answers. He knew the negro man Thornton Blackburn, but did not know the negro woman Ruthy; Thornton was the property of the estate of Gideon Brown.

2d. At what time were said negroes lost to the possession of the owners, and under what circumstances?

He answers. On the 4th of July, 1831, as well as deponent now recollects, these negroes made their escape from Louisville—Ruthy was the reputed wife of Thornton—and a short time afterwards deponent, as the agent of his father, John P. Oldham, went in pursuit of them, and found them in Detroit, Michigan. He was not acquainted with Ruth as aforesaid; but a woman was arrested with Thornton in Detroit, and proven to be the property of McKnight; and deponent has no doubt but that she is the same here alluded to. Before they were delivered over by the officers of court they were rescued by some negroes and white men, and have never since been recovered. The last defendant heard of them they were in Canada.

3d. Have said negroes ever been recovered by their owners?

He answers. He has stated above.

4th. What was the value of either or both of the negroes at the time they were lost?

He answers. Thornton was worth six or $700 at that time, and the woman about $450.

5th. Do you know any thing of the cost incurred by the executor of said Gideon Brown, deceased, or by said McKnight, in the effort to recover possession of said negroes?

He answers. The costs incurred by both McKnight & Brown's executor was about $350. The expenses were mutually borne by each party. And further saith not,

TALBOT C. OLDHAM.

The following depositions were received, with the papers in this cause, from the clerk of the Jefferson circuit court, to wit:

Depo. of William Oldham.

The deposition of William Oldham, taken by consent of counsel, at the office of Pertle & Anderson, in the city of Louisville, to be read as evidence in the suits now pending in the Jefferson circuit court, wherein John P. Oldham, executor, &c., of Gideon Brown, is complainant, and J. R. McFarland and others are defendants, and Virgil McKnight, complainant, vs. the same defendants. The deponent being of lawful age, and first duly sworn, deposes and says, that he left Louisville on

the 5th day of July, 1831, in the pursuit of two negroes, named Thornton Blackburn, and a negro woman, his wife, the former belonging to the estate of the late Gideon Brown, of which estate John P. Oldham is executor, and the latter the property of Virgil McKnight, and reached Cincinnati on the 6th of the same month, and there found that the names of said negroes were entered on the books of the stage office, and destined, as appeared by the entry on said books, for the city of Sandusky, in the State of Ohio. The entry thus made was dated on the 4th day of July, 1831, to the best of his knowledge and belief. He further states, that, in the pursuit of said negroes, he expended the sum of $25 or $30, necessarily. He also states that Thornton was a mulatto man, about 25 years of age. And further this deponent saith not.

WM. R. OLDHAM.

Deposition of Ch. Wurts.

And also the deposition of *Edward* Wurts, taken at the same time and place, and to [be] read in evidence in the same causes, and between the same parties, by consent of counsel, being of lawful age, and duly sworn, deposes and says: That he was well acquainted with a mulatto man, named Thornton Blackburn, hired by the firm of Wurts & Reinhard, of John P. Oldham, in the year 1831; that said negro made his escape from the possession of said Wurts & Reinhard on the 3d day of July, 1831, which was on the Sabbath day; that said negro man was frequently in the company of, and associated with, a mulatto woman named Ruthy, the property of Virgil McKnight, and some time previously the property of Mr. Barkus, then of this city, which said negro woman made her escape at the same time that the negro man Thornton Blackburn did; that the negro man, Thornton, would be cheap at the sum of six or $700; and that the negro woman, at the time of her escape, was worth the sum of $400. And further this deponent saith not.

CHAS. WURTS.

Deposition of Tho. J. Rogers.

Also the deposition of Tho. J. Rogers, taken by consent of counsel, at the same time and place, and to be read in the same causes, and between the same parties. The deponent being of lawful age, and first duly sworn, deposes and says: that he, Thornton Blackburn, a mulatto man, in the employ of Wurts & Reinhard, in the year 1831, and that he afterwards met with said negro man in Detroit, in the Territory of Michigan, in the fall of the same year that he was residing in that place. He further states, that the steamboat Versailles has not been, to the best of his knowledge and belief, in the port of Louisville for the last twelve months. And further this deponent saith not.

T. J. ROGERS.

Depo. of T. Bayless.

The deposition of Thornton Bayless, taken at the office of Pertle & Anderson, in the city of Louisville, the 24th day of May, 1832, to be

as evidence on behalf of Virgil McKnight, in a suit in chancery depending in the Jefferson circuit court, wherein said McKnight is complainant and M. Quarrier, &c., are defendants; deponent being of lawful age, and first duly sworn, says, that he was clerk of the steamboat Versailles during one trip from Louisville to Cincinnati; that the boat left Louisville on Sunday, the 3d day of July, 1831; that the boat crossed from Louisville to Jeffersonville, In., and a very short distance above Jeffersonville the boat was hailed by some negroes; the boat was stopped, and two negroes came on board whilst the boat was floating in the Ohio river, (the engines having been stopped;) one of the negroes was a man, a genteel looking mulatto, called Blackburn; the woman was a fine looking mulatto, handsomely dressed, and was called the wife of the man; she was dressed in a superior piece of black silk goods; both the negroes were taken to, and landed at, Cincinnati, in the State of Ohio. M. Quarrier was the captain then in command of the boat, and on board at the time of the negroes coming on board, and at the time of landing; the dress of the negro man I do not recollect, but I think he wore a black coat. And further saith not,

THORNTON BAYLESS.

The following agreement between the counsel was filed in this suit, to wit:

Agreement by counsel.

In this case it is agreed, that the slave, if taken at all, was taken from the shore of the Ohio adjoining the State of Indiana, and that the steamboat Versailles belonged to the port of Wheeling, in Virginia, and that the officers of the boat, and a part of the owners, were citizens of Virginia, residing there, and the other owners citizens of Kentucky. The parties do not admit any thing, either way, as to good or bad faith.

GUTHRIE & BULLOCK.
PIRTLE, *for defendants.*

COMMONWEALTH OF KENTUCKY, *Louisville chancery court:*

I, Charles J. Clarke, clerk of the court aforesaid, do hereby certify, that the preceding fifty pages (this included) contain a full and complete transcript of the record and proceedings had in *this* cause between the parties therein named.

In testimony whereof I have hereto subscribed my name, at my office, in Louisville, the 29th day of July, 1845, and in the 54th year of the commonwealth.

CH. J. CLARKE.

The said plaintiffs in error, Mary McFarland and John M. Ferguson, administrators of John R. McFarland, Wm. Christopher, Jacob Rynear, Jacob Darneal, and Monroe Quarrier, R. Pindell, administrator of A. Kirkpatrick, come and say, that manifest error to their prejudice occurred upon the hearing, and in the decree rendered in this cause, for which they ask a reversal of the decree of the chancellor; and they assign the following errors, to wit:

Errors assigned by plaintiffs.

1st. The chancellor, in making his decree, has erroneously decided, in substance, that an act of the general assembly of the Commonwealth of Kentucky, approved February 12th, 1828, entitled "An act to amend an act to prevent the masters of vessels and others from employing or removing persons of color from this State," is within the rightful authority and legislative jurisdiction of the State of Kentucky; when in fact the plaintiffs aver that the said act was in violation of the Constitution of the United States, and every article thereof.

2d. The chancellor erred in deciding that the act of the Kentucky Legislature of 7th January, 1824, to prevent masters of vessels and others from employing or removing slaves from this State, and also that the act of the same Legislature of the 2d February, 1837, directing the trial of the facts and the assessment of damages to be by a jury, are within the rightful power and legislative jurisdiction of Kentucky; when, on the contrary, plaintiffs aver, that said acts, and each of them, are in conflict with the Constitution of the United States.

3d. The chancellor erred in deciding that the captain of a steamer, belonging to Pennsylvania or Virginia, navigating the Ohio river, has not a right in good faith to take a colored person as passenger from the Indiana shore, where all colored persons are prima facie free and not slaves, and in subjecting plaintiffs to damages for so doing; and the chancellor has thereby violated the Constitution of the United States, by depriving plaintiffs of rights and privileges secured to him by the Constitution of the United States, and also by the compact between Virginia and Kentucky, and under the laws of the Congress of the United States, made under the Constitution.

4th. The chancellor, by his decree, has deprived the plaintiffs of rights vested in them under the ordinance of Congress of 1789, in relation to the Northwest Territory. And the plaintiffs in error make said acts of the General Assembly of the Commonwealth of Kentucky by reference part hereof, (here insert them,) and they ask that this court will, in their decision, if against plaintiffs in error, make a formal decision upon the constitutional question involved in the record, so that they may have the question revised by the Supreme Court of the United States.

PIRTLE & SPEED,
And DUNCAN, *P. Q.*

Cause heard.

At a court of appeals, held on the 15th June, 1846, the parties in this cause appeared, by their attorneys, and the cause was heard; but the court not being sufficiently advised, took time.

Opinion of court of appeals.

And on the 19th of said month, "the court being sufficiently advised, it seems to them that the errors assigned draw in question only the

constitutionality of the acts of the Legislature of Kentucky, noticed in the opinion of the chancellor, and raise no question against the form of the decree. This court has already sustained the constitutionality of the acts referred to in the case of Church et al. vs. Chambers—(3 Dana, 274.) We still adhere to that opinion, and concur with the chancellor, substantially, in the opinion which he has delivered, and approve the conclusion at which he has arrived. We deem it unnecessary, therefore, to add anything to what he has said, but direct the report of his lucid argument and the result as the opinion of this court.

Decree affirmed.

It is therefore ordered and decreed, that the decree of the Louisville chancery court be *affirmed*, which is ordered to be certified to said court. And it is further decreed that the plaintiffs in error pay to the defendant his costs herein expended.

STATE OF KENTUCKY, *sct:*

I, Jacob Swigert, clerk of the court of appeals for said State, do certify, that the foregoing forty-seven pages contain a true and perfect transcript of the record and proceedings of the case therein mentioned.

In testimony whereof, I have hereto set my hand, and affixed the [SEAL.] seal of office, this 28th Oct., 1846, and in the 55th year of the commonwealth. J. SWIGERT, *C. C. A.*

Fee - - $12 00
Tax and seal - 1 00

To Virgil McKnight.

Whereas, an appeal has been prayed by Mary McFarland and John Ferguson, administrators of John R. McFarland, Richard Pindell, administrator of A. Kirkpatrick, Monroe Quarrier, William Christopher, Jacob Rynear, and Jacob Darneal, from the affirmance of the court of appeals of the State of Kentucky, on the 19th day of June, 1846, of a decree of the Louisville chancery court, which appeal is hereby granted to the Supreme Court of the United States, in the said suit wherein the said McFarland, &c., were appellants, and said McKnight was appellee.

These, therefore, are to cite and command you to be and appear in the said Supreme Court of the United States, at the city of Washington, on the first Monday in December next, and then and there to be heard, if any thing you have to say, upon the said appeal.

Witness my hand, as one of the justices of the said Supreme Court of the United States, this 27th day of July, A. D. 1846.

J. McKINLEY.

The within executed on Virgil McKnight, August 13, 1846.

WM. LOGAN, *D. M.*
For JOHN LANE, *M. K. D.*

Know all men by these presents, that we, Mary McFarland and John Ferguson, administrators of John McFarland, Richard Pindell, administrator of A. Kirkpatrick, Monroe Quarrier, William Christopher, Jacob Rynear, and Jacob Darneal, and M. Quarrier and W. S. Wilson,